

ORIGINAL

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

OPEN MEETING ITEM



0000164613

RECEIVED

ARIZONA CORPORATION COMMISSION

2015 AUG 24 P 2:48

AZ CORP COMMISSION
DOCKET CONTROL

DATE: AUGUST 24, 2015

DOCKET NO.: RR-03639A-15-0146

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 2, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 8, 2015 AND SEPTEMBER 9, 2015

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

AUG 24 2015

DOCKETED BY	TV
-------------	----

A handwritten signature in black ink, appearing to read "Jodi Jerich".
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.cc.state.az.us

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE UNION PACIFIC
12 RAILROAD AT PRODUCE ROW IN THE CITY
13 OF NOGALES, SANTA CRUZ COUNTY,
14 ARIZONA, USDOT NO. 742-034T.

DOCKET NO. RR-03639A-15-0146

DECISION NO. _____

15 **OPINION AND ORDER**

11 DATE OF HEARING: August 4, 2015

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. James Redpath and Michelle Burton, Assistant
15 Attorneys General, Transportation Section, on behalf of
16 the Arizona Department of Transportation;

17 Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &
18 Schwartz, P.C., on behalf of the Union Pacific Railroad;
19 and

20 Mr. Charles Haines, Staff Attorney, Legal Division on
21 behalf of the Safety Division of the Arizona Corporation
22 Commission.

23 **BY THE COMMISSION:**

24 On May 8, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona
25 Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad
26 ("Railroad") to upgrade an existing crossing at Produce Row in the City of Nogales ("City"), Santa
27 Cruz County, Arizona, at USDOT No. 742-034T ("Application").

28 On May 26, 2015, by Procedural Order, a hearing was scheduled for August 4, 2015.

On June 9 and 23, 2015, ADOT filed documentation that it had provided public notice in
accordance with the Commission's Procedural Order.

On August 4, 2015, a full public hearing was convened before a duly authorized

Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and the Commission's Safety Division, Railroad Safety Section ("Staff") were present with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 8, 2015, ADOT filed an Application requesting an Opinion and Order from the Commission approving an agreement between ADOT and the Railroad to upgrade an existing at-grade crossing at Produce Row in Nogales, Santa Cruz County, Arizona, USDOT No. 742-034T.

2. Prior to the filing of the Application, representatives of ADOT, the City, the Railroad and Staff participated in several diagnostic review meetings of the proposed upgrades for the crossing. All parties who were present at these meetings were in agreement that the proposed enhancements would improve safety at the crossing.¹

3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing at Produce Row, a two lane paved roadway, which consists of one eastbound and one westbound lane with a shared turning lane. The proposed improvements will replace the existing automatic warning devices with two new automatic gates with LED flashing lights on both sides of the roadway, and add advanced traffic preemption to interconnect with the Railroad's equipment and traffic signals. The Railroad will maintain the warning devices and the crossing after the upgrades are completed.

4. On June 9 and 23, 2015, ADOT filed documentation that it had provided public notice of the Application and hearing thereon, pursuant to the Commission's Procedural Order, by publishing notice in the *Nogales International* and by mailing by certified U.S. mail, notice to the City and the Railroad.

¹ The proposed upgrade of the Produce Row crossing was approved by the Commission in Decision No. 73610 (December 12, 2012) as part of the 2012 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section 130") which is provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100 percent of the cost of the project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railroad crossings which are not primarily for the benefit of the Railroad.

1 5. The hearing was held as scheduled on August 4, 2015.

2 6. According to the Staff Memorandum, the areas adjacent to the Produce Row at-grade
3 crossing consist primarily of land which is zoned for light industrial uses.

4 7. Mr. Jason Pike, a Railroad and Utility Coordinator for ADOT, testified in support of
5 the Application.

6 8. According Mr. Pike, the project involves typical at-grade crossing improvements with
7 upgrades to the gates and automatic traffic preemption devices at the Produce Row crossing which is
8 located east of State Route 19B in the City.

9 9. Mr. Pike stated that the existing gates will be replaced with new gates with flashing
10 LED lights. (Tr. 6:3-8)

11 10. Mr. Pike testified that ADOT is in agreement with the recommendations of Staff in its
12 memorandum. (Tr. 7:9-12)

13 11. Mr. Pike further testified that ADOT is also in agreement with Staff with respect to the
14 fact that grade separation is not required at the Produce Row crossing, according to the nine criteria
15 set forth in the Federal Highway Administration Grade Crossing Handbook. (Tr. 6:9-14)

16 12. Mr. Pike stated that the City will maintain the roadway approaches to the Produce
17 Row at-grade crossing, and the crossing surface and warning devices will be maintained by the
18 Railroad. (Tr. 10:1-10)

19 13. Mr. Pike stated that ADOT anticipates construction of the upgrade to be completed
20 within 12 months of the Commission's approval of the Application. (Tr. 8:20-24)

21 14. According to Mr. Pike, the upgrades to be installed at the Produce Row at-grade
22 crossing are in the public interest and will be consistent with similar crossings in Arizona. (Tr. 9:1-
23 25)

24 15. Mr. Brian Lehman, the Supervisor of the Commission's Railroad Safety Section for
25 the Commission, testified that he had prepared the Staff Memorandum which describes the nature of
26 ADOT's proposed improvements at the Produce Row crossing. (Tr. 12:10-18)

16. According to Mr. Lehman, Staff believes that the improvements which will be made to the Produce Row crossing are in the public interest and consistent with improvements which have been made to similar crossings within Arizona. (Tr. 13:18-24)

17. Mr. Lehman further testified that the improvements will be made with all new equipment to the Produce Row at-grade crossing. (Tr. 15:1-7)

18. Mr. Lehman stated that the upgrades at the Produce Row at-grade crossing will improve the flow of traffic for emergency vehicle traffic at the crossing. (Tr. 16:3-12)

19. Mr. Lehman indicated that Staff does not believe that the Produce Row crossing requires grade separation and further stated that it would be a multi-million dollar project if the Produce Row crossing were grade separated. (Tr. 16:12-22)

20. Staff is recommending that the Application be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The installation of the crossing upgrade is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as recommended by Staff.

5. After the installation of the improvements at the Produce Row at-grade crossing, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application, as described herein, is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing upgrade as described in the Application within fifteen months of the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in

writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
MES:tv(ru)

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-15-0146

3 Alex Popovici, Manager
4 Industry & Public Projects
5 UNION PACIFIC RAILROAD COMPANY
631 South 7th Street
Phoenix, AZ 85034-2203

6 W. Reed Campbell
7 BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.
8 302 East Coronado
Phoenix, AZ 85004
Attorneys for Union Pacific Railroad Company

9 Jason Pike
10 Railroad and Utility Coordinator
11 ARIZONA DEPARTMENT OF TRANSPORTATION
205 South 17th Avenue, Room 357
M/D 618E
Phoenix, AZ 85007

12 James Redpath
13 Michelle Burton
14 OFFICE OF THE ATTORNEY GENERAL
1275 W. Washington Street
Phoenix, AZ 85007

15 City Attorney's Office
16 CITY OF NOGALES
777 N. Grand Avenue
Nogales, AZ 85261

17 Janice Alward, Chief Counsel
18 Legal Division
19 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

20 Brian Lehman, Chief
21 Railroad Safety Section of the Safety Division
22 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

23

24

25

26

27

28